IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27-7-2005

Coram:

The Honourable Mr. Justice T.V. MASILAMANI

C.A. No.1048 of 2000

1. J.P.S. Enterprises,
   No.1, School Road,
   Ambattur, Chennai 600 053.

2. P.Manavalan .. Appellants
   Accused 1 & 2

vs.

State rep. by
Inspector of Police,
District Crime Branch,
St. Thomas Mount,
Chennai 600 018. .. Respondent
Complainant

Criminal Appeal against the judgment made in C.C. No.7 of 2000 dated 3.11.2000 on the file of the Special Judge for T.N.P.I.D. Cases, Chennai.

For Appellants : Mr.R. Venkatasubramaniam
For Respondent : Mr.A.N.Thambidurai,
Govt. Advocate (Criminal side).

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JUDGMENT

The appellants preferred this appeal against the judgment of conviction and sentence passed by the Special Judge for TNPID Act Cases, Chennai in C.C.No.7 of 2000 dated 3.11.2000.

2. The appellants/accused 1 and 2 were charged for the offences under Sections 409 and 420 I.P.C., Sections 4, 5, 6 of Tamil Nadu Prizes and Chits Money Circulation Scheme (Banning) Act, 1978 and under Section 5 of the Tamil Nadu Protection of Interest of Depositors Act, 1997. According to the prosecution, the second accused as promoter of the first accused firm floated price money circulation scheme under

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which he had collected money from various persons through agents totalling Rs.30,50,500/- and cheated the subscribers by not repaying the said amounts as per the assurance given by him at the time of collecting subscriptions. Hence, the accused 1 and 2 were charged for the offences under the said provisions of law.

3. When the second accused was questioned initially with reference to the charges, he denied the same and therefore the prosecution examined 25 witnesses and produced 34 documents to prove the charges.

4. Learned Special Judge for TNPID Act Cases having analysed the evidence let in by the prosecution both oral and documentary found the appellants 1 and 2 guilty of the offence under Section 420 I.P.C. and imposed a fine of Rs.50,000/- and also convicted and sentenced the second accused to undergo 3 years R.I. and further convicted the second accused under Section 5 of the TNPID Act and sentenced him to undergo 10 years R.I. and also to pay a fine of Rs.1,00,000/- in default to undergo one year R.I. and also ordered the sentences to run concurrently. Hence, the appeal.

5. The case of the prosecution as discerned from the evidence may be briefly set out hereunder:-

(a) According to the witnesses P.Ws.1 to 9, 14 and 15 examined on the side of the prosecution, they were engaged by the second accused for canvassing the money circulation business run by the first accused and according to them, they had canvassed the said scheme and more than 3600 persons joined and subscribed to the said prize chit circulation scheme run by the first accused and collected in all a sum of Rs.30,50,800/-.

(b) The other witnesses, P.Ws.13 and 19 have spoken to the fact that the second accused became the tenant of the premises bearing Door No.1, High School Road, Ambattur, Chennai to run the said business under the name and style J.P.S. Enterprises. Similarly, they have also spoken to the fact that apart from the said premises, another one at Krishnapuram, Ambattur was leased out to the second accused in the name of his wife Sailaja for residential purpose. In or about February 1997, the second accused had left the premises under lock and key.

(c) According to the Investigating Officers, P.Ws.22 to 25, they received complaints from P.Ws.1 to 9, 14 and 15 and set the law in motion. They have recorded the statements of the witnesses, seized the incriminating documents under cover of mahazars and after completing the investigation, laid the final report against the accused.

6. The second accused when questioned under Section 313 Cr.P.C. with reference to the incriminating circumstances as seen from the evidence of the prosecution, he has denied the same. He has stated

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further that his brother one Venkatesan was running the prize money circulation scheme and that since he could not repay the amounts to the subscribers, they had given the complaints against the first accused. According to him, he has not conducted any prize scheme nor had he collected subscriptions from any one.

7. In the above circumstances, it has become necessary to consider whether the judgment of conviction and sentence rendered by the Special Judge for TNPID Act Cases are liable to be set aside.

8. The learned counsel for the appellants (hereinafter referred to as accused for the sake of convenience) has contended at the out set in his argument that there is no iota of evidence adduced by the prosecution to connect the accused with the alleged offences said to have been committed by the accused. According to him, the alleged depositors, P.Ws.1 to 9, 14 and 15 were not able to recover the money invested by them in the prize money circulation scheme conducted by the brother of the second accused, namely, Venkatesan and therefore they have given the false complaint against the second accused so as to harass him. Further, he has strenuously contended that the ingredients for the offence under Section 420 I.P.C. have not been made out in this case and therefore he has urged that the judgment of conviction and sentence passed by the Special Judge has to be set aside.

9. Per contra, learned Government Advocate (Criminal side) has submitted in his arguments that the voluminous documents filed in this case have proved the guilt of the accused beyond reasonable doubt. According to him, Exs.P-1 and P-2, the pamphlets published by the second accused floating the first accused concern under the name and style "J.P.S. Enterprises" prove clearly that in pursuance of such advertisement, P.Ws.1 to 9, 14 and 15 had acted as agents and joined subscribers to the said prize money circulation scheme. Their evidence coupled with the other documents under Exs.P-3 to P-34 would also lend support to the case of the prosecution in proving the guilt of the accused beyond reasonable doubt.

10. In this context, the learned counsel for the accused has referred me to the evidence of P.Ws.1 to 9, 14 and 15 in their cross-examination to show that invariably all the witnesses would admit that the second accused has not signed in any of the documents produced by the prosecution in this case. It is no doubt obvious from Exs.P-1 and P-2 that neither the name of the second accused nor the name of the printing press is found therein so as to support the contention of the learned Government Advocate (Criminal side) that the second accused is the promoter of the first accused concern.

11. Similarly, learned counsel for the accused has pointed out that none of the subscription cards produced on the side of the

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prosecution under Exs.P-3, P-4, P-6, P-8, P-9, P-11, P-16, P-17, P-19 and P-20 would disclose either the name of the second accused or his signature so as to foist the criminal liability on him. In this regard, the evidence of P.Ws.1 to 9, 14 and 15 in the cross-examination is that the second accused has not signed in any of the documents referred to above and therefore the learned counsel for the accused has urged that the finding of the Special Judge that the prosecution has proved the guilt of the accused beyond doubt has to be set aside.

12. A careful reading of the judgment of the learned Special Judge would also indicate his finding that even though none of the documents produced by the prosecution bear either the name of the second accused or his signature, yet the other circumstances would indicate that both the accused are guilty of the offence. A careful scrutiny of the entire evidence let in by the prosecution would in my opinion indicate that such finding has no basis at all for the reason that in none of the documents, the second accused has subscribed his signature.

13.Similarly, the contention of the learned Government Advocate (Criminal side) is that the evidence of previous Investigating Officers, P.Ws.22 to 25 would go to show and prove beyond doubt that the second accused had taken out the premises on rental agreement to run the prize chit money circulation scheme under the name and style of the first accused and therefore he would contend that such circumstance would lend support to the case of the prosecution.

14. But, on the contrary, as has been rightly pointed out by the learned counsel for the accused, the above mentioned witnesses, P.Ws.13 and 19 would admit candidly in their cross-examination that the second accused has not given any document in writing in support of such rental agreement and therefore I am unable to subscribe to the view expressed by the learned Government Advocate in this respect.

15. In this connection it is useful to extract Section 415 I.P.C. which reads as under:-

> "415. Cheating.-- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
>
> Explanation.-- A dishonest concealment of facts is a deception within the meaning of this section."

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16. The learned counsel for the accused has however drawn the attention of this Court to the decision of the Apex Court in R.S.NAYAK v. A.R.ANTULAY (1986 (2) S.C.C. 716) regarding the ingredients for 'cheating' as defined under Section 415 I.P.C. which runs as under:-

> "(i) there should be fraudulent or dishonest inducement of a person by deceiving him;
>
> (ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or
>
> (b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and
>
> (iii) in cases covered by the second part of (ii), the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

17. Hence, on the basis of the evidence adduced by the prosecution in this case, learned counsel for the accused has contended that there is nothing on record to show and prove that the second accused intentionally induced the subscribers to pay the subscriptions as spoken to by P.Ws.1 to 9, 14 and 15 and therefore he has contended, in my opinion rightly that in the absence of any documentary evidence adduced by the prosecution to connect the accused on the one hand and the subscribers on the other, this Court cannot hold that the case of the prosecution has been proved beyond reasonable doubt.

18. Similarly, the learned counsel for the accused has relied on the decision CHANDRAN v. STATE OF KERALA (AIR 1990 S.C. 2148) in support of his further contention that in a case where some evidence was let in by the prosecution to connect the accused with the crime, the Hon'ble Supreme Court held that conviction on the basis of only a piece of circumstantial evidence is not sustainable. As has been rightly pointed out by the learned counsel for the accused, in this case there is not even a circumstance shown by the prosecution to connect the accused on the one hand and the subscribers of the prize money circulation scheme on the other hand as alleged by the prosecution. Looking at the evidence of the prosecution in any manner, this Court is unable to find any clinching proof to sustain the judgment of conviction and sentence passed by the Special Judge in this case.

19. Though the Additional Public Prosecutor would contend that as per the evidence of P.Ws.1 to 9, 14 and 15, the second accused had deposited Rs.72,000/- in another firm and also purchased immovable

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property, such evidence in my opinion is not sufficient enough to prove the guilt of the accused for the simple reason that there is nothing on record to show that the amount collected from the subscribers had been utilised for the said purpose. Hence, in this respect also, I am unable to subscribe to the view of the learned Government Advocate (Criminal side).

20. The admitted fact is that the second accused is employed in the Railway Department and therefore the learned Sessions Judge would have observed in his judgment that on account of his employment in the Railway Department, the second accused engaged agents for collection of the subscriptions and made them responsible for such collection. In view of such finding, the learned Government Advocate (Criminal side) would urge in his contention that the above said fact also would go to show and prove the guilt of the accused. In this context, as has been rightly argued by the learned counsel for the accused, I am unable to accept such contention for the simple reason that there is no evidence on record to draw the inference that because the second accused is employed in the Railway Department, he engaged agents on his behalf to collect the subscriptions. Moreover, a careful scrutiny of the oral evidence would indicate clearly that nowhere the second accused had admitted in writing that he received the subscriptions from any member of the prize chits as contended by P.Ws.1 to 9, 14 and 15. For the above said reason, I am unable to endorse the view of the learned Government Advocate (Criminal side) in this respect also.

21. Thus, it is seen from the evidence of the prosecution that the ingredients of Section 415 I.P.C. as stated above have not been made out in this case. Similarly, it follows that the charges under Sections 4, 5 & 6 of the Tamil Nadu Prize Chits Money Circulation Scheme (Banning) Act, 1978 and Section 5 of the Tamil Nadu Protection of Interest of Depositors Act, 1997 have not also been proved by the prosecution beyond reasonable doubt.

22. For the aforesaid reasons, this Court is of the considered view that there is no clinching evidence to prove the guilt of the accused and therefore the judgment of conviction and sentence passed by the Special Judge is liable to be set aside.

23. Thus the appeal is allowed by setting aside the judgment of conviction and sentence imposed by the Special Judge for TNPID Act Cases, Chennai in C.C.No.7 of 2000 dated 3.11.2000 and the

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appellants/accused are acquitted of the charges with which they were tried and convicted. If the second accused is in jail, he is directed to be set at liberty forthwith, unless he is required in connection with any other case. Similarly, the accused are entitled to the refund of any amount recovered from them.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Special Judge for TNPID (in FES)Act Cases, Chennai.
2. The Inspector of Police, District Crime Branch,
   St.Thomas Mount, Chennai-18
3. The Public Prosecutor, High Court, Chennai.
4. The Superintendent, Central Prison, Vellore.

One cc to M/S P.Venkatasubramanian, Advocate Sr No. 31151

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km/27.7.

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